from. *Bank of Montreal* v. *Chicago, C. & W. R. Co.*, 48 Iowa, 518; *Booth* v. *Clark*, 17 How. 322, 15 L. Ed. 164; *Davis* v. *Gray*, 16 Wall. 203, 21 L. Ed. 447; *Attorney General* v. *Insurance Co.*, 89 N. Y. 94; Bisp. Eq. (3d Ed.) par. 580. Indeed, the receiver has been aptly termed the arm or hand of the court, by which it seizes property in controversy, and preserves it for the benefit of whomsoever shall ultimately become entitled thereto. 20 Am. & Eng. Enc. Law (1st Ed.) 158. The primary object is the preservation of the property, and every person undertaking the duties of a receivership must be assumed to appreciate the main and controlling purpose to be subserved in his selection. It is no injustice to him, then, that the object of his appointment be kept in mind in adjusting his accounts, and that courts, after seizing the property of litigants, will not approve of its dissipation in useless expenses, or shut their eyes to its loss through the negligence or mismanagement of its officers. Not every act within the letter of an order can be sanctioned, nor everything done without the direction of the court condemned. The tests to be applied are: (1) Was the act under investigation within the authority conferred by an order of court? (2) If so, was it performed with reference to the preservation of the estate, as a man of ordinary sagacity and prudence would have performed it under like circumstances? (3) If without authority, was it beneficial to the estate? These principles are so elementary that authorities need scarcely be cited. But see *Yetzer* v. *Applegate*, 85 Iowa, 121, 52 N. W. 118; *Kaiser* v. *Kellar*, 21 Iowa, 95; Beach, Rec. sec. 229, 301; 20 Am. & Eng. Enc. Law (1st Ed.) 120; *Carr's Adm'r* v. *Morris*, 85 Va. 21, 6 S. E. 613.

"The property, though temporarily in the keeping of the court, is sheltered by the same rights of ownership as before seized. It 'does not sit as a bandit dividing booty,' as was remarked by the court of appeals of New York in *Attorney General* v. *Insurance Co.*, 91 N. Y. 57, 43 Am. Rep. 648. Its duty is to see that the property is conserved with the same care as is exacted from trustees generally. The same degree of diligence should be exacted from the receiver in keeping down expenses and shielding the property from unjust exactions as a prudent man would exert in protecting and realizing from his own property. Any other rule would be inconsistent with the high responsibility involved in devesting owners of possession for the purpose of a safer administration and more just distribution by the court. See *Speiser* v. *Bank* (Wis.) 86 N. W. 243; *Henry* v. *Henry* (Ala.), 15 South. 916."

See the recent Virginia case of *State Bank* v. *Domestic Sewing Machine Co.*, 99 Va. 411, where the difference between the powers of a passive and of an active receiver are pointed out, and where also will be found a discussion, by Whittle, J., of the implied powers of an active receiver.

PRACTICE AT LAW — WRIT RETURNABLE TO A DAY NOT A RULE DAY, BY ERROR OF CLERK — EFFORT TO CORRECT — STATUTE OF LIMITATIONS.—We have the report of a recent ruling on a novel point of practice, by Judge Hundley, of the Circuit court of Mecklenburg county. The action was for personal injuries inflicted September 8, 1900. On September 7, 1901, counsel for plaintiff made a memorandum in the clerk's office for summons against the defendant, returnable to the second September rules (third Monday), but by a clerical error

the clerk made the summons returnable to the *second* Monday in September, which was neither a rule day nor a first day of a term. This process was duly served on the date of its issue. On the 9th day of September—two days after the issue and service of the process—the clerk issued another summons in the same case, returnable to the first October rules. This summons, by endorsement on the back thereof, the clerk designated as "a duplicate," with a statement that there was an error in the former process.

At the first October rules the declaration was filed, and the common order entered. At the next rules, the common order was confirmed and a writ of inquiry ordered. On the first day of the next term (May, 1902), the defendant appeared and pleaded the one year statute of limitations and the general issue.

If the action was legally begun by the issuance of the first writ, on September 7, clearly it was not barred, whereas, if the commencement of the action were reckoned from the date of the second, or "duplicate" writ, it is equally clear that the action was too late, under the ruling in *Birmingham* v. *C. & O. R. Co.*, 98 Va. 548, 6 Va. Law Reg. 411.

The court ruled that the first writ was not merely defective but void, and that the action was not commenced until the issuance of the second writ, at which time the bar of the statute had attached.

After discussing the question as to whether the one year or the five-year period of limitation were to be applied, with the conclusion that the one-year limitation was applicable, the court said:

"This brings us to the consideration of the second question—whether the writ issued in this case on the 7th of September, 1901, was a good writ, a defective writ, or a void writ. Plaintiff's counsel contended that this was a good writ, because of the words in the writ, 'being rule day,' notwithstanding the fact that the defendant was required to attend on the second Monday in September, which was not a rule day; that the defendant was required to know the law, and that by law there could be no rules on the second Monday, but that the first rule day had passed and that the next rules would be on the third Monday. I hardly think it necessary to notice this contention further than to say that the summons itself is the chart and guide for the defendant, and he is not obliged to know anything contrary to that or outside of it.

"Their next contention was that the writ was simply defective, and that the defect could not be taken advantage of except by plea in abatement.

"Under our statute, process must be 'returnable within ninety days after its date to the court on the first day of a term, or in the clerk's office to the first or third Monday in a month, or to the first day of any rules' (sec. 3220 of Code). These things, then, are clearly necessary to the validity of any process such as this, and the want of any one of these requisites renders it void, not defective; and a void writ cannot be amended, but it may be quashed or disregarded by the court. It is nothing—it has no force or effect whatever.

"This writ does not meet any of the conditions or requirements as to the return day. It is not returnable to any rule day, and is void. We are not without authority on this point. In the case of *Kyles* v. *Ford*, 2 Rand. 1, there was just such a process as this (it was a *scire facias*), made returnable to a day which was neither the first day of a term of court, nor a rule day, and the court said: 'Process made returnable to a day which is not a legal return day is void.' And this case has been followed without dissent through a long line of authorities and decisions, the following being some of them: 1 Rob. (old) Pract. 121; 1 Bart. Chy. Pract. 235; *Hickman* v. *Larkey*, 6 Gratt. 210; *Warren* v. *Sanders*, 27 Gratt. 259; *Raub.* v. *Otterback*, 89 Va. 645."